2004 UN Commission on Human Rights:

Mission: to promote and protect human rights

"This is a time when your mission to promote and protect human rights in the widest sense is more important than ever, your responsibility to act more urgent."

From UN Secretary-General Kofi Annan's address to the 59th session of the Commission on Human Rights, 24 April 2003.

Promotion and protection of human rights are among the key functions of the Commission on Human Rights (the Commission) and yet there are many human rights situations which the Commissions simply fails to address. There have even been times when the Commission has adopted 'motions to take no action' to avoid consideration of human rights violations. [1] And even where the Commission has acted it has too often demonstrated its inability or unwillingness to monitor implementation of its own recommendations. At its 60th session Amnesty International (AI) is calling on member states to build on the momentum created by the Secretary-General's reform process[2] as well as the ongoing review of the working methods of the Commission[3] to consider fundamental reform of the working methods of the Commission to enable it to take effective and concrete action to end grave violations of human rights wherever these occur.

AI is also presenting a number of recommendations to the Commission in respect of issues on the Commission's agenda, including in relation to ending violence against women; abolition of the death penalty; human rights and counter-terrorism; human rights and sexual orientation; human rights of refugees, asylum-seekers, and other migrants and non-nationals; and on the Human Rights Norms for Businesses. In the area of standard-setting AI is making recommendations in relation to the draft binding instrument on enforced disappearance, on an optional protocol to the International Covenant on Economic, Social and Cultural Rights, and the "Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law".

With regard to human rights violations in specific countries, AI presents brief regional overviews followed by individual sections on the 18 countries currently on the Commission's agenda: Afghanistan, Belarus, Burundi, Cambodia, Chad, Colombia, Cuba, Democratic Republic of Congo, Haiti, Iraq, Israel and the Occupied Territories, Liberia, Myanmar, People's Democratic Republic of Korea, Sierra Leone, Somalia, Timor-Leste, and Turkmenistan. In providing this information AI wishes to stress that its concerns about the human rights situation in individual countries go far beyond these 18 countries as the organization's annual report and other reports will testify.[4] However, it is AI's hope that the information provided will assist the Commission in taking concrete action to end human rights violations wherever these occur.

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[1] Members of the Commission have tabled motions of "no action" prevent scrutiny of the human rights situation in countries like China and Zimbabwe.

[2] Report of the Secretary-General on Strengthening the United Nations: an agenda for further change (A/57/387), 9 September 2002.

[3] Commission resolution 2002/91 and decisions 2002/115 and 2003/116.

[4] See Amnesty International Report 2003 (AI Index: POL 10/003/2003) and other documents available on www.amnesty.org. .

and opposing impunity for faction leaders responsible for past war crimes and crimes against humanity.

Amnesty International calls on the Commission to:

- Urge all political authorities in the south to take immediate steps to end human rights abuses by their forces in the areas they control, observe the ceasefire and contribute positively to measures aiming at national reconciliation;
- Call on all parties to the peace talks to place human rights at the centre of all discussions and to ensure implementation of Security Council resolution 1325 in particular ensuring that women are represented at all levels of decision-making and guaranteeing the protection of human rights of women and girls from violence and discrimination;
- Urge the Security Council to establish a Panel of Experts to investigate war crimes, crimes against humanity and gross violations of basic human rights in the past, both under the Siad Barre government, during the post-1991 civil wars, and up to the present, in order to contribute to the process of genuine and lasting peace and reconciliation, through a possible Truth and Reconciliation;
- Urge the African Union to activate ceasefire monitoring plans as soon as possible, including also observance of international humanitarian law and international human rights law, ensuring public reporting and accountability procedures
- Support and strengthen the field presence of the OHCHR in Somalia, including through projects to support to civil society groups; projects contributing to peace, democratisation and development; the rights of women, children and minorities; freedom of the media, and access to justice;
- Extend the mandate of the Independent Expert on the situation of human rights in Somalia and provide the necessary assistance and adequate resources to enable him to carry out his work effectively.

Timor-Leste

The Democratic Republic of Timor-Leste (formerly East Timor) gained independence only two years ago. The new country joined the UN in 2002. The government has acceded to several key human rights treaties, although limited progress has been achieved in developing a national legal framework to protect human rights and strengthen the newly established judiciary, police force and other key institutions. These weaknesses within the justice system, particularly the lack of human resources, training and oversight of officials, continue to undermine the rule of law, security and human rights. However, underlying the country's efforts to build a nation founded on the rule of law, is an entrenched legacy of impunity for human rights violations committed in Timor-Leste while under Indonesian rule and in the context of the August 1999 ballot which resulted in the country becoming independent.

It is estimated that 1,400 people were killed in the months proceeding and in the aftermath of the ballot, and that 30 percent of the population were forcibly deported or fled to West Timor, where an estimated 28,000 remain in refugee camps. Other human rights violations including torture, rape and other forms of sexual violence were committed, overwhelmingly against

supporters of independence.[206] These widespread and systematic violations were carried out by militia, set up and supported by, and sometimes with the direct involvement of, the Indonesian security forces, in order to influence the outcome of the ballot and disrupt the implementation of the result.

In response to this violence the Commission convened a Special Session in September 1999 to consider the human rights situation in Timor-Leste. In recognition of the responsibility of the international community to bring to justice perpetrators of crimes of such a serious nature as those committed in Timor-Leste, it adopted a resolution affirming that the international community would exert every effort to ensure those responsible for the violence are brought to justice.[207] The demand that perpetrators be brought to justice in a manner consistent with international fair trials standards has been reiterated in statements by the Commission Chairperson in subsequent years.[208]

Obstructions to Accountability

Two parallel processes were established to bring to justice alleged perpetrators of human rights violations in Timor-Leste.

In Indonesia, a Human Rights Court was established in 2001 by a Presidential Decision[209] to hear some of the most egregious cases of violence in Timor-Leste. These trials have all but come to an end, but have not succeeded in delivering justice to the thousands of victims and their families in Timor-Leste. Throughout the process AI repeatedly drew attention to the shortcomings in these trials, including the limited territorial and temporal jurisdiction of the court,[210] the decision of the Attorney General's Office to investigate only five out of the many hundreds of crimes committed; the decision to prosecute only 18 lower and middle-ranking officials[211] out of potentially hundreds of suspects and the weakness of the cases presented by the prosecution, including their failure to present before the court well-attested evidence.[212]

In Timor-Leste, the work of the Special Panels, established by the UN in 2000, is proceeding. As of the beginning of December 2003, indictments had been issued against 369 people of whom many are charged with committing crimes against humanity. Of the 369, 280 are currently in Indonesia, including senior military and police officials, some of whom have been tried and acquitted in Indonesia's Human Rights Court and others who were never subjected to investigation. The Indonesian authorities have publicly stated that they will not transfer these

[206] Persons particularly targeted included political activists (or their family members), students, priests and nuns, local people working for the UN, or anyone suspected of supporting independence.
[207] Fourth Special Session of the Commission, 23-24 September 1999, Resolution S-4/1, 27 September 1999, paragraph 4.
[208] Chairperson's statements on the situation of human rights in Timor-Leste: OHCHR/STM/CHR/00/24 (2000); OHCHR/STM/CHR/01/1(2001); OHCHR/STM/CHR/02/1(2002); OHCHR/STM/CHR/03/3 (2003).
[209] Decision No. 96/2001.
[210] A 2001 Presidential Decision establishing the court allowed the court to hear only those cases which took place in the two months of April and September 1999 and restricted its jurisdiction to just three out of 13 districts in Timor-Leste.
[211] Twelve of those prosecuted were acquitted.
[212] See *Report of the Special Rapporteur on the independence of judges and lawyers* (E/CN.4/2003/65/Add.2), paragraphs 58-68 and conclusions 99-101,106, and paragraph 116; *Amnesty International Briefing to Security Council Members on policing and security in Timor-Leste* (AI Index: ASA 57/001/2003); and *Indonesia & Timor Leste: International responsibility for justice* (AI Index: ASA 03/001/2003).

suspects to Timor-Leste for trial,[213] claiming the Special Panels have no jurisdiction over these international crimes.[214]

In responding to the failure so far to provide justice to the people of Timor-Leste it is important that the international community realizes that the pattern of human rights violations committed by the Indonesian security forces, or their militia proxies, in Timor-Leste in 1999 continues to take place elsewhere in Indonesia. Following the imposition of a military emergency in Nanggroe Aceh Darussalam on 19 May 2003 grave human rights violations have been reported, including extrajudicial executions, including of children, arbitrary detention, torture, sexual violence including rape and forcible displacement. Local human rights defenders have been subjected to arbitrary detention, harassment and intimidation. Combined with restrictions on access to international humanitarian and human rights workers, this means that there is virtually no independent monitoring of the human rights and humanitarian situation in the province. In Papua peaceful expressions of support for independence are prohibited and individuals have been brought to trial for involvement in flag raising ceremonies. Other human rights violations, including extrajudicial executions and torture, also continue to be documented.

Amnesty International calls on the Commission to:

- Condemn in the strongest terms Indonesia's failure to fulfil its stated commitment and duty to bring to justice, in a credible manner that conforms to international standards for fair trial, all perpetrators of serious crimes, including crimes against humanity, committed in Timor-Leste during 1999;
- Express serious concern at the continued reluctance of the Indonesian authorities to cooperate with the serious crime investigations, prosecutions and trials process in Timor-Leste, including by urging them to transfer the 281 suspects against whom indictments have been served, to Timor-Leste for trial;
- Support all efforts to ensure that credible and effective trials of all perpetrators, including those residing in Indonesia, be brought to justice;
- Express serious concern at reports of grave human rights violations in Nanggroe Aceh Darussalam (NAD) Province under the current military emergency, and urge the government of Indonesia to grant access to international humanitarian and human rights workers and to guarantee the protection of local human rights defenders.

Turkmenistan

The Turkmen authorities have shown no political will to improve Turkmenistan's appalling human rights record. They have failed to implement the recommendations by the international community, including the Organization for Security and Co-operation in Europe (OSCE), the Commission on Human Rights, and the European Union. In December 2003, the General

[213] To date, Indonesia has not ratified the Memorandum of Understanding regarding cooperation in legal, judicial and human rights related matters, of 6 April 2000, signed by the Indonesian Attorney-General and the Special Representative of the Secretary General on the situation in East Timor (for UNTAET).
[214] The argument that the Special Panels do not have jurisdiction, contradicts the principle of universal jurisdiction.